Supreme Court, U.S.
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Case No. : 00-1334

In The

SUPREME COURT OF THE UNITED STATES

BOBBY W. KENNEDY, et al.

Petitioners

v.

FRIGIDAIRE COMPANY, et al.

Respondents

On Petition for Writ of Certiorari
To The Supreme Court of Alabama

REPLY TO BRIEF IN OPPOSITION

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ARGUMENT

The petitioners' Reply To Brief In Opposition represents the respondents' Briefs in Opposition to the Petition for Writ of Certiorari combined .

I. THE ALABAMA STATE COURTS DID ADDRESS THE FEDERAL LAW ISSUES PUT BEFORE THEM IN THE WRIT OF MANDAMUS AND PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT, APPEALS COURT, AND THE SUPREME COURT OF ALABAMA.

The courts had the opportunity to address the federal law issue and instead denied the state Writ of Certiorari.

The defendant, Frigidaire, et al.'s, statement in their brief in opposition to petition for writ of certiorari, page 2, that the petitioner's retained counsel after they filed suit is without merit. It was not until 6 months into the case (C 00003 - 00006) that the petitioners retained counsel and only after the petitioner's were told by the Circuit Court Judge, Judge Jetton, that they could not win in his court Pro Se. The defendant's, Frigidaire et al., having been duly served with the summons and complaint and not being an infant or an unrepresented incompetent person and having failed to plead or otherwise defend, and his default having been duly entered by the Pro Se Plaintiffs , the defendants made a motion

to have the entered default judgment set aside . (C-00107) In the hearing to argue the set aside of the entered default judgment , the judge stated the Pro Se Plaintiffs could not win a case in this court because they did not have an attorney. The Pro Se plaintiffs were also given no chance for discussion or argument concerning the set aside of the default judgment during the argument hearing June 20, 1997. (C00106) In the Motion for Writ Of Mandamus to Not Grant The Set Aside the Entered Default Judgement,dated July 28, 1997, the Pro Plaintiffs stated their civil rights were violated under the 1st, 5th, and 14 amendments to the United States Constitution and the Alabama Constitution. (C 00105 par 2)The Pro Se Plaintiffs filed on June 30, 1997, a motion to reconsider the order to set aside the entered default to ask the court's permission to be heard and present this written argument since no oral argument was allowed in objection to the order to set aside the default judgment. (C 00194)

The plaintiffs discharged their attorneys (C 00269) for failure to properly take discovery and for aiding and abeting the defendant, Frigidiare, by dismissing their expert witness from the case who was Pyrotec and Richard Keith, the investigator who promised the petitioners they would get a copy of the investigative report if they would allow him to investigate the fire scene and after he promised, the petitioners allowed him to inspect the fire scene and he showed the plaintiff, Bobby Kennedy, smoked glass from the room that had the clothes dryer and said that the fire started in this room. (C 01315, par. 6) The defendant would not give the promised report to the plaintiff and said that the report does not

exist, but when the circuit court judge requested it, it was discovered and the court was told there was an investigative report . The defendant, Frigidaire also told the court there were no recalls on the clothes dryers when it had been recalled for causing l00,000 fires.

The respondent, Frigidaire et al., admits on page 7 of the respondent's Brief that the petitioner had claimed the due process. The respondent stated:

"the Kennedys were somewhat more specific in referring to federal constitutional and statutory claims. (Writ of Ceertiorari brief, p.4; 8, 9 ; 11). They contended that the entry of the summary judgment against them violated their "constitutional rights to a fair access to the court. Federal Constitutions Civil Rights Act l964, Title VII and the 14th amendment to th U.S. Constitution and the Alabama Constitution under U.S. Constitution and th Alabama Constitution under due process and discrimination." "the trial judge was "biased against them" , "they were "retaliated against" by the trial judge in violation of "thee equal Protection Clause" and "The Civil Rights Act of l964 the U.S. Constitution and thee amendment of l991 under Title VII." (Writ of Certiorari Brief, p. 11).

The federal question was in the Writ and Briefs to the Appeals Court, Supreme Court, and State Court and Writ of Mandamus.

The Respondent, Frigidaire et al.'s, statement that the petitioners did not cite citations to the authorities that support his contentions are without merit . The petitioners followed Rule 28, Alabama Rules of Appellate Procedure and cited in their Brief,

Petition, and Writ to the Alabama Courts in the argument portion of their briefs, petition, and writs, the citations to the authorities that support his contentions of federal constitutional violations of his first, fifth, and 14 amendments to the U.S. Constitution, his due process and equal protection of his civil rights under the Civil Right Act and Title VII , and the summary judment by the trial judge, was due to be voided. see Harris v. Harris , 528 So. 2d, 866, (Ala Civ. App. 1988,) and Anderson v. Liberty Lobby, Inc. 477 U.S. 141, 148, 106 S Ct 2505, 2510, 91L. Ed. 2d. 202 1986. Reference pages in the record . C 00105, page 2, 2nd par.Writ of Mandamus to not Set Aside the Entered Default Judgement.

II. THE ACTIONS OF THE DEFENDANTS AND ALABAMA COURTS ARE VIOLATIONS OF THE PETITIONERS' FEDERAL CONSTITUTIONAL RIGHTS, FEDERAL LAWS, AND STATUES.

The respondent, Frigidaire et al., stated the Kennedy's proffered expert witness admitted that he was "speculating" (pg. 8 , respondents' brief)about what might have caused the fire. This statement was without merit . The petitioners ' expert witness stated in deposition and affidavits that the fire started in the clothes dryer. (C 00606,p. 179 , C 01332, C 00486, p.181, Lines 14-17, and C 01272).

The respondent, Frigidaire et al, stated the local fire marshall testified that the dryer was not located at the fire's point of origin. (p.8, respondents' brief)

The fire started in the room that housed the clothes dryer as admitted by the defendant, Frigidaire et al.'s expert witness that said the fire started where the glass was smoked up.
(C 01368) Respondent in his brief in opposition to petition for Writ of Certiorari admitted they had recalls on the clothes dryer and they were not the same model; however they had denied the recalls when asked about recalls in discovery and stated to the court they had not had any recalls.

The petitioners were treated differently and their equal protection and due process of the 14th amendment to the U.S. Constitution and civil rights were violated when summary judgment was given to the respondents.The Alabama Supreme Court did not apply the correct standard in reviewing the Court of appeals and the Circuit Court in granting of summary judgment.

(a) Summary judgment will not lie if the dispute about a material fact is "genuine", that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. At the summary judgment state, the trial judge's function is not himself to weigh the evidence [477 U.S. 242, 243] and determine the truth of the matter but to determine whether there is a genuine issue for trial. There is no such issue unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. In essence, the inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. The Frigidaire Co. had recalls in Canada on the clothes

dryer that caused the fire that burned the petitioners house down and did not notify the petitioner that this same clothes dryer would short out by the heating element sagging and touching the metal of the dryer causing it to stay on and catch fire after the timer had shut off. Frigidaire had offered a switch in the recall to fix the problem but never told the petitioner or others in the U.S.A. See Anderson v. Liberty Lobby, Inc. 477 U.S. 242 (1986).

All of Frigidaire's clothes dryers manufactured by White Consolidated Industries have the same design and the only difference is the name they place on the dryer - Kelvinator, White westinghouse, Frigidaire, Gibson, etc.

The petitioners asked for the report of the Frigidaire investigator and records in interrogatories and was denied this by both Allgas and Frigidaire and was told they did not have any record and refused to supply the record. Reference to appellants' Writ of Certiorari Brief in the Supreme Court of Civil Appeals of Alabama, p. 18 and 19 . The attorneys for Frigidaire misrepresented the fact to the judge in a hearing on Nov. 5, 1999 by saying he did not know of a report, but would look for one. (CR 16, In 10-11). Frigidaire had paid Pyrotec and Crawford Insurance Co. to investigate and prepare the report as admitted in a tape conversation with Richard Keith, Pyrotec investigator, and Dan King, appellants' attorney, where Richard Keith admitted that he had notes, report on the investigation and would not supply without a subpoena. Dan King prepared a Motion to Subpoena the report and evidence and the judge refused to sign the order to

subpoena.

Even the respondents, Frigidaire et al., answers to the 5th 6th and 7th answer to the petitioners law suit complaint were unconstitutional violations of the 8th and 14th amendment due process clause of the U.S. Constitution (C 00020) making this a constitutional issue from the beginning.

III. THE PETITIONERS DEMONSTRATED THAT FEDERAL QUESTIONS EXISTED

This court has jurisdiction to review the judgment of the Supreme Court of Alabama by Writ of Certiorari pursuant to 28 U.S.C. 1257. The petitioners also have the right to have this case redressed under U.S. constitutional authority of the 5th and 14th amendment.

IV. THE PETITIONERS PRESERVED FEDERAL ISSUES AND ADDRESSED SUCH ISSUES BEFORE THE TRIAL COURT AND ALABAMA APPELLANT COURTS

The jurisdiction for this case to be heard by the U.S. Supreme court is under the 5th amendment and 14th amendment to the U.S. constitution and other federal laws and statutes and other civil rights laws.

The petitioners constitutional rights were violated by the Alabama courts when they allowed the summary judgment to stand in violation of the petitioners constitutional right to due process and equal protection under the 5th and 14th amendment to the U.S. Constitution.

V. THE PETITIONERS CLAIMS DO CONSTITUTE FEDERAL CONSTITUTIONAL VIOLATIONS.

Judge Jetton, senior judge, stated in the record (C 00008) there are genuine issues for material facts and the defendants motion should be and are hereby overruled. Set for status Jan 15 ,1998 . Anderson v. liberty Lobby, inc., 477 U.S. 242 (1986) states there must be no material fact of law in dispute. This case works equally to the advantage of the petitioners.

Respondant's attorney, Ward Wilson, admits (CR-18,par.3), "As to their claims against Allgas and other related defendants, they have got an AMELD claim just as they've got one against the dryer company." Allgas was also guilty of spoliation when they removed the tank before the petitioners, their expert witness, or th LP gasboard inspctor could inspect the tank at the fire scene. (C 01282) Allgas removed the regulator and other parts on the tank and repainted the tank before it could be inspected.

In Dubrt v. Merrell Dow Pharm, Inc. 509 U.S. 578, 592, 113 S. Ct. 2786, 2796, 125L. d.2d 469 (1993) Dubert demand is that the trial judge makes a "preliminary assessmnt" of whether the proffered testimony is both reliable (i.e. based on "scientific knowledge") and helpful (i.e. of assistance to the trier of fact in understanding or determining a fact in issue) however ; there is no requirement that the proffering party must "prove" anything to the court before the testimony in question can be admitted.

The petitioners had an AEMLD claim as admitted by the respondents, there had been recalls

on the clothes dryer, the senior judge stated the petitioners had genuine issues for material fact, Allgas did not deny spoliation by removing the tank from the fire scene, replaced parts, and painted the tank before it could be inspected . The petitioners were denied due process under the 14th amendment of the U.S. Constitution.

The respondents evidence is without merit and the respondents and these Alabama courts have attempted to steam roll these Pro Se petitioners from the beginning to the end of this case by denying recalls, and investigative reports until after the summary judgment was granted. Summary judgment was wrong and this case should have been tried by a jury and as in Roger Reeves v. Sanders Plumbing, SC No. 99-536, June 12, 2000, the petitioners should have been given the right of evidence just as Roger Reeves was given. Respondent was not entitled to judgment as a matter of law under the particular circumstances presented here. The court must review all of the evidence in the record, cf., e.g.Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587, drawing all reasonable inferences in favor of the nonmoving party, (the petitioners in the summary judgement) but making no credibility determinations or weighing any evidence, e.g. Lytle v. household Mfg., Inc. 494 U.S. 545, 554-555. The latter functions, along with the drawing of legitimate inferences from the facts, are for the jury, not the court. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255. The court should review the record as a whole. The petitioners evidence in the summary

judgment was treated differently by the courts of Alabama than the evidence in Reeves v. Snaderson Plumbing Products, Inc. SC No 99-536, June 12, 2000, Powell v. State of Alabama 287 U.S. 45-1932, U.S. Suprme Court Case No 98-100, Anderson v. Liberty Lobby, Inc. 477 U.S. 242 (1986) SC No 87-1602, June 25, 1986 and other cases.

All of the laws of this land state that a person can represent himself in all courts; however Pro Se plaintiffs can never win and the courts in Alabama are all biased against Pro Se plaintiffs.

In this case the respondents have violated many laws including manufacturing shipping and selling recalled defective clothes dryer and products that violates the U.S. consumer product safety commerce laws and the government has done nothing to them for these violations. Hopefully this court will show mercy and help the Pro Se petitioners get justice.

CONCLUSION

The petitioners respectively request that this honorable U.S. Supreme Court grant the Writ of Certiorari in their favor and remand this case to the Alabama Courts for a trial by jury.

A Certificate of Service is attached by separate letter.

Respectfully submitted,

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